

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

VINCENT F. DIAL,

Petitioner,

v.

Civil Action No. **3:09cv004**

GENE M. JOHNSON,

Respondent.

MEMORANDUM OPINION

Petitioner, a Virginia prisoner proceeding *pro se*, filed action pursuant to 28 U.S.C.

§ 2254. On June 24, 2009, the Court granted Respondent's motion to dismiss. On July 14, 2009, Petitioner filed a response to the Court's dismissal wherein he requests the Court to reconsider its decision.¹ The Court will treat Petitioner's response as a motion for reconsideration pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

A Rule 60(b) motion is not a substitute for a proper appeal. *Dowell v. State Farm Fire & Cas. Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993) (citing *Ackerman v. United States*, 340 U.S. 193, 198 (1950)). "Rule 60(b) does not authorize a motion merely for reconsideration of a legal issue." *Eberhardt v. Integrated Design & Constr., Inc.*, 167 F.3d 861, 870 (4th Cir. 1999) (quoting *United States v. Williams*, 674 F.2d 310, 312 (4th Cir. 1982)). Where, as here, a litigant seeks merely to re-argue an issue decided adversely to him, relief under Rule 60(b) is inappropriate. See *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991) (holding dismissal of Rule 60(b) motion proper where motion "basically revisit[ed], albeit in somewhat

¹ Petitioner's response was placed in the mail on July 14, 2009, and is deemed filed as of that date. *Houston v. Lack*, 487 U.S. 266 (1988).

different forms, the same issues already addressed and dismissed by the court” because “revisiting the issues already addressed ‘is not the purpose of a motion to reconsider’” (*quoting Van Skiver v. United States*, 751 F. Supp. 1522, 1523 (D. Kan. 1990))). Petitioner’s motion for reconsideration will be DENIED.

An appropriate Order shall issue.

/s/
James R. Spencer
Chief United States District Judge

Date: 9-3-09
Richmond, Virginia